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No. 96-203

In The
Supreme Court of the United States
October Term, 1996

JOYCE B. JOHNSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United
States Court Of Appeals For The
Eleventh Circuit

JOINT APPENDIX

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Petition For Certiorari Filed August 5, 1996
Certiorari Granted November 15, 1996

90 pp

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs. Case No. 94-54-Cr-J-20

JOYCE B. JOHNSON,

Defendant.

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

March 29, 1994	-	Indictment
March 31, 1994	-	Order Setting Conditions of Release
April 1, 1994	-	Record of Hearing: Arraignment
April 28, 1994	-	Motion to Suppress Statements, by defendant
May 9, 1994	-	Motion to Dismiss Indictment, by defendant
May 9, 1994	-	Report and Recommendation that Motion to Suppress Statements be denied
May 23, 1994	-	Response to Motion to Dismiss Indictment, by Government
May 27, 1994	-	Order Denying Motion to Dismiss Indictment and Denying Motion to Suppress Statements
June 1, 1994	-	Motion to Suppress Grand Jury Testimony of Defendant and all evidence derived therefrom, by defendant

June 15, 1994	-	Response to Motion to Suppress Grand Jury Testimony of Defendant and all evidence derived therefrom, by Government
July 5, 1994	-	Supplemental Memorandum in Support of Motion to Suppress Grand Jury Testimony of Defendant and all evidence derived therefrom, by defendant
July 13, 1994	-	Report and Recommendation that Motion to Suppress Grand Jury Testimony of Defendant and all evidence derived therefrom be denied
July 25, 1994	-	Objection to Third Report and Recommendation, by defendant
October 17, 1994	-	Order Adopting Third Report and Recommendations and Denying Motion to Suppress Grand Jury Testimony of defendant and all evidence derived therefrom
December 5, 1994	-	Requested Jury Instructions, by Government
December 5, 1994	-	Motion in Limine, by defendant
December 6, 1994	-	Record of Hearing: Jury Trial
December 6, 1994	-	Requested Jury Instructions, by defendant
December 6, 1994	-	Motion to Redact Transcript of Grand Jury Testimony of Joyce B. Johnson, by defendant

December 6, 1994	-	Motion for Disclosure of Grand Jury Audio Recording, by defendant
December 6, 1994	-	Motion in Limine to Exclude Evidence With Regard to Defendant's Purchase of Real Property, by defendant
December 6, 1994	-	Oral Order Denying in Motion to Exclude Evidence With Regard to Defendant's Purchase of Real Property, Denying Motion for Disclosure of Grand Jury Audio Recording and Granting in Part and Denying in Part Motion in Limine to Exclude Irrelevant and Prejudicial Evidence Pursuant to Fed.R.Evid. 401, 402, 403 and 404(b)
December 7, 1994	-	Record of Hearing, Jury Trial
December 7, 1994	-	Oral Motion for Judgment of Acquittal, by defendant
December 7, 1994	-	Oral Order Denying Motion for Judgment of Acquittal
December 8, 1994	-	Record of Hearing - Jury Trial
December 8, 1994	-	Oral Motion for Judgment of Acquittal, by defendant
December 8, 1994	-	Oral Order Denying Motion for Judgment of Acquittal
December 8, 1994	-	Supplemental Requested Jury Instructions, by defendant
December 9, 1994	-	Record of Hearing - Jury Trial; Defendant found guilty, conditions of release remain same
December 9, 1994	-	Court's Instructions to Jury

December 9, 1994 - Jury Verdict of Guilty as to Count I
 December 16, 1994 - Motion for Judgment of Acquittal After Discharge of Jury, by defendant
 December 16, 1994 - Motion for New Trial, by defendant
 January 3, 1995 - Response to Motion for New Trial, by Government
 January 4, 1995 - Order Denying Motion for New Trial
 March 23, 1995 - Notice of Intent to Apply for Bail Pending Appeal, by defendant
 March 23, 1995 - Motion for Bail Pending Appeal, by defendant
 March 23, 1995 - Notice of Intent to File Notice of Appeal, by defendant
 March 31, 1995 - Response to Motion for Bail Pending Appeal, by Government
 March 31, 1995 - Record of Hearing: Sentencing
 March 31, 1995 - Notice of Appeal, by defendant
 April 4, 1995 - Judgment and Commitment

UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 JACKSONVILLE DIVISION

UNITED STATES
 OF AMERICA

Case No. 94-54-Cr-J-20

Ct.1: 18 U.S.C. § 1623

v.

(5 yrs./\$250,000/both/
 3 yrs. SR)

JOYCE B. JOHNSON

INDICTMENT

The Grand Jury charges:

COUNT ONE

On or about March 25, 1993, at Duval County, in the Middle District of Florida,

JOYCE B. JOHNSON,

the defendant herein, while a witness and under oath before a Federal Grand Jury of the United States District Court, did knowingly and willfully make false, material declarations, that is to say:

A.

At the time and place aforesaid, the Federal Grand Jury was engaged in an investigation of alleged distribution of cocaine and marihuana by Earl James Fields, a/k/a Taz, a/k/a Shorty, a/k/a Shorty Taz, and the disposition of money which was proceeds of this cocaine

and marihuana distribution activity, including the possible concealment of such proceeds as investments in real estate.

B.

It was a matter material to the Grand Jury to determine the source of funds invested in the reconstruction of the premises located at 8063 Moore Avenue, Jacksonville, Florida, where Joyce B. Johnson was living.

C.

At the time and place aforesaid, the defendant, Joyce B. Johnson, while under oath, did knowingly and willfully make the following declarations before the Federal Grand Jury with respect to the aforesaid matter (charged false declarations underlined [here shown in italics]):

Q. Any other property?

A. No, except the one I'm living in.

Q. Right.

A. Okay.

Q. Which is on Moore Street?

A. Right, Moore Avenue.

Q. Moore Avenue. How much is that piece of property worth?

A. I think it's probably worth about \$150,000. probably. I'm just guessing.

Q. How much did you pay for it?

A. \$90,000. I paid -

Q. When did you buy that?

A. In May of '91.

Q. You said it's now worth \$150,000?

A. Yes.

Q. Did you do any improvements on the property?

A. Yes.

Q. How much money did you put in the improvements?

A. That I can't say exactly but I have put quite a bit. I would not have even - I would not have even considered getting that property unless I already had the monies to put into it.

The monies that I put into it was monies that was given to my mom and me back in probably '85, '86, and as I told Mr. Stull, I'm not sure of the exact amount. I wasn't aware that he was going to ask me other things about me. But the monies were given to me, me and my mom, because it was given to me by - and I guess you all want to know, right?

Q. Yes, please.

A. Okay.

Q. Very curious.

A. It was given to me by this same man that has already paid my four years' tuition to college and he also gave me an Omega watch back in 1964 when I graduated from high school.

How this happened was is that my mom worked at a motel in Baldwin for, God, my

father left home when I was eight months old. I was born and raised in Baldwin. He left home so I never had a father but I had grandparents that were always there for us, so my mom moved in with them and was working seven days a week at a motel.

And at that time, at the time that she was working there, she found a wallet of this white gentleman that was from Canada, he was from Bowmanville, Ontario. His name was Gerald Talcott, T-a-l-c-o-t-t.

He - after Mother found the wallet, she returned it, and - well, he thought he had lost it. He had gone probably as far as - because Baldwin is where 90 and 301 dissect, and he was going through from Canada going down south. Normally he went through to Clearwater, Florida.

But anyways, Mother found the wallet, held it until he came back, because he called back to see if anybody had found it, and Mother did. It probably had between \$100, \$150 in it, but it had his ID, driver's license, charge cards and those kind of things.

So with that, my mom and he became friends because it was just he and his wife, no children, and they were - he would always - they would write each other and then Mother would tell him that I was in school, that I was an A student and back then we were bused to Stanton. And being bused to Stanton from Jacksonville, we were bused 10th, 11th and 12th grades.

My being from Baldwin didn't allow me the chance to get a scholarship because only the

well-known children got scholarships, the teachers' daughters or the principals' sons or the people that knew somebody. But the out-of-city, out-of-city kind of kids, even if they were A students didn't get a chance to go the college.

So my mom, in writing and talking to him, was advising Mr. Talcott that I was not going to be able to go even though I was number 19 or 21 in a class of 420 back in '64. And, of course, I had never had a gold watch before but then I still even have that watch now because my daughter - it was given to my daughter on her 14th birthday. And it's an Omega that is intact and you can tell that it's old, old watch.

Q. How much money did he give to you and your mom in 1985 or '86?

A. Well, see, I'm not really sure exactly how much it was because it was given to us - it was given to us in a box and it was basically for my mom, for her and her livelihood, because he was talking about how hard she had had it, how hard she had worked, and the fact that he just wanted her to be sure she did all right.

And, like I said, if I said to you exactly how much it was, I would be lying to you.

Q. Approximately.

A. Approximately maybe from \$80- to \$120,000 maybe. I'm not even sure.

Q. That was back in '85 or '86?

A. Yes.

Q. How many sisters and brothers do you have?

A. One. One sister alive, one brother that died ten years ago with lung cancer.

Q. Your mother was still living in Baldwin when she got the money?

A. Yes.

Q. Where was she living in Baldwin?

A. It's four of them that lived together. My mom lives at one trailer. My sister lives next door. My uncle lives there and my aunt lives there. So, it like an area.

And my mom did in fact leave me the trailer when she died. She died two years ago, October 1990.

Q. So, this money was given to her you said '85, '86?

A. Yes

* * *

Q. What year was this that you bought this property on Moore Street?

A. May '91. May 1991.

Q. That was after you had received this \$80- to \$120,000?

A. I knew I already had that to use.

Q. That money you had put in your savings account at Jax Navy?

A. No, no, no, that's from my savings. No, ma'am. Through the years.

Q. Money that's in the savings is from your savings through the years?

A. Yes.

Q. So, where was this \$80,000 once - after your mother died, where did you keep that money?

A. I just kept it in a closet like my mom did.

Q. Wouldn't it have been better to get the interest on that money?

A. No. Because I was also told, too, though, that if it's a gift and you are not earning any interest on it, then it still remains a gift. If you put it in the bank and you are earning interest on it, then you pay taxes on it.

Q. So, you have this \$80,000 or more?

A. \$80- or more.

* * *

Q. How much did the improvements cost you?

A. I know they cost at least all I had and then I remortgaged the house to get an additional \$47,000.

Q. When you say at least all you had, did that include that \$80,000 you had at home in the closet?

A. Yes.

Q. And all the money in your savings account?

A. Yes, yes. No, not all, because my car - my Cadillac was totaled back in January '92, and when it was totaled I got 9,6- from the car being totaled.

And then I got a lawyer because, well, we were hurt a little bit, too, because he ran red lights and ran into us. So I probably have close

to \$15,000 in my savings at First Union to eventually buy me another car.

But now that we don't get interest back on cars anymore, I don't know if I'm going to get one anytime soon.

Q. You said you are not sure how much those improvements cost you?

A. No, but it cost all of the monies that my mother left me. That was - all of that was used. So I'd say, and I'm only guessing, I'd say roughly the \$80- to \$120-, I'm not really sure because we are talking about the bricks - not the bricks, the cement, we are talking about the floors, we are talking about the walls, we are talking about the roof, we are talking about - and then I did bring receipts, too.

D.

The aforesaid testimony of the defendant, Joyce B. Johnson, as she then and there well knew, was false in that she and/or her mother had not received \$80,000 - \$120,000 from Gerald Talcott in 1985 - 1986 and in that the funds invested in the reconstruction of 8063 Moore Avenue came from other sources.

All in violation of Title 18, United States Code, Section 1623.

A TRUE BILL

/s/ Benjamin W. Mixon
FOREPERSON

LARRY H. COLLETON
United States Attorney

/s/ Ernst D. Mueller
ERNST D. MUELLER
Assistant United
States Attorney

/s/ Brian M. Kane
BRIAN M. KANE,
Managing
Assistant United
States Attorney

UNITED STATES OF AMERICA
GRAND JURY INVESTIGATION
FEDERAL COURT GRAND JURY
139 POST OFFICE BUILDING
JACKSONVILLE, FLORIDA 32201

MATTER NO. 9056177
TESTIMONY AND PROCEEDINGS

2:08 p.m., March 25, 1993

TESTIMONY OF WITNESS

JOYCE B. JOHNSON

ALL PROFESSIONAL REPORTERS
 716 PINE STREET
 NEPTUNE BEACH, FLORIDA 32266
 PHONE 904/249-0476

[p. 2] TESTIMONY AND PROCEEDINGS before the Federal Grand Jury, held in the Grand Jury Room, 139 United States District Court and Post Office Building, 311 West Monroe Street, Jacksonville, Duval County, Florida 32201, commencing at 2:08 p.m., on Thursday, March 25, 1993, before Noel S. Seiler, Registered Professional Reporter, CM, and a Notary Public in and for the State of Florida at Large.

[p. 3] APPEARANCES

JANICE L. INNIS-THOMPSON, Esquire,
 Assistant United States Attorney
 United States Attorney's Office
 409 Post Office Building
 311 West Monroe Street
 Jacksonville, Florida 32201,
 attorneys for the Government.

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[p. 5] PROCEEDINGS

2:08 p.m. March 25, 1993

JOYCE B. JOHNSON,
 having been produced and first duly sworn as a witness
 on behalf of the Government, testified as follows:

EXAMINATION

BY MS. INNIS-THOMPSON:

Q Please state your name and spell your last name.

THE FOREMAN: Bring your chair up so you
 will be closer to the microphone.

THE WITNESS: Joyce B. Johnson, J-o-h-n-s-o-n.

BY MS. INNIS-THOMPSON:

Q Good afternoon, Ms. Johnson. My name is Janice Innis-Thompson. I'm an Assistant United States Attorney.

Seated before you are members of the federal Grand Jury and we are conducting an investigation and we have asked you here today. I think you received a subpoena regarding that investigation.

Now, you are not currently a target of this investigation; however, if you have the right to remain silent because anything you say can and will be used against you in later proceedings.

And you have the right to an attorney. If you can't afford an attorney, the Court will appoint one for [p. 6] you. Do you have an attorney?

A I had one that was willing to come with me but then the times and dates changed so much that he did not have any time available for this afternoon.

Q Do you think that you would like to speak to the Grand Jury even without him being here?

A Sure.

Q Okay.

A Hopefully so this will be over.

Q Ms. Johnson, could you please tell us how old you are.

A 45. 46 in June.

Q What's your date of birth?

A 6/17/47.

Q How much education have you had?

A Bachelor's in English from Florida A & M University.

Q What do you currently do for a living?

A I'm the recruitment supervisor for the District IV, seven counties from Volusia County to Nassau County.

Q What agency is that?

A Health and Rehabilitative Services.

Q Do you have any children?

A Yes, two.

Q How old?

[p. 7] A Ramell, a son, 25. And Erica, a daughter, 14.

Q Are any of these children at home with you now?

A Erica.

Q Where do you currently live?

A At 8063 Moore Avenue, 32208.

Q Now, as a recruitment supervisor for HHS -

A HRS.

Q I'm sorry, HRS. I apologize.

A Yes.

Q In the federal system we deal with the HHS so that's why I said that.

Approximately how much money do you make per year?

A Probably about between \$33- to \$35,000.

Q That's before taxes?

A Yes.

Q Do you own any properties in Jacksonville?

A Um-hum.

Q Can you list some of those, please.

A The home that I just moved from in September, I owned it as of - I'm not sure of the month, in '85. It was a home that I bought back in '73 that was only it was \$12,500 back in '73. So, the house notes were no more than \$103, \$117, so it was paid off early.

Q What's the address?

[p. 8] A 3230 West Moncrief Road.

Q You still own that property?

A Yes. My son lives in that.

Q Any other properties?

A Um-hum. I have a piece of property at 3502 Hunt Street that a fellow I knew was losing, so I was able to get a mortgage and - second mortgage and be able to keep that and rent it out.

Q How much did you pay for that piece of property?

A Just the second mortgage, just by getting a second mortgage that would pay the - the foreclosure amount.

Q Approximately how much was that?

A It was a second mortgage that was about \$10,000.

Q When did you buy that piece of property?

A I'm not sure of the date. But I've had it probably about three - maybe three or four years, but I've been filing taxes with it since that time.

Q That would be about the late '80s that you purchased that piece of property?

A Yes.

Q Any other property?

A And then I bought a piece of property that Mary Sheppard was selling for a thousand down and I could take over the mortgage note of \$138 a month, so I was able to [p. 9] get that, too.

Q Where is that property located?

A That's 3515 - on Cecilia Street. I'm not sure of the exact address. It's on Cecilia Street.

Q What's the total value of that piece of property?

A I'm not even sure because I haven't paid taxes yet.

Q When did you purchase that?

A That's been a while back, too. Probably about - it's been since '85 because - it's been since '85 but I'm not sure of the exact date, but then she no longer wanted it and was going to - and it was abandoned, too, at the time.

Q So you don't know what the value is on it?

A No.

Q You pay -

A It was a duplex but it's now just a one-family dwelling and it's a wooden house that, I don't know, it's just a wooden house that's not worth that much, but it does give me rents and I've been filing with that.

Q How much rent?

A I recently got somebody that moved in it probably eight or nine months ago that pays \$400 a month.

Q And the property on Hunt Street, is that rented also?

[p. 10] A Yes.

Q How much rent?

A That's rented and the rental I'm thinking is \$375 a month. HUD pays a portion and the person pays an amount, too.

Q And -

A The same lady was living in the house when I bought it, too. It was going in foreclosure.

Q The Moncrief Road, you said your son lives in that property, does he pay you rent?

A He is supposed to be buying the house from me but children don't always pay as they should pay, but yes, he's supposed to be buying it from me.

Q Any other pieces of property?

A Yes. Sixth Avenue. I was going to build a house. Well, I've - I was going to build a house on the Sixth Street address. It wasn't going to be for income. And a Mr. - so I bought this property by just taking over the mortgage. No monies changed hands or anything because he no longer wanted the property, and I think it's 8817 Sixth Avenue, yes.

Q How much was the mortgage on that?

A Mortgage on that is \$349.25.

Q Do you know the approximate value of that piece of property?

[p. 11] A No, but it could probably - if I ever get the money, it could probably - I could probably build two houses on the property. It's a big piece. It was a dream that I was going to build there eventually.

Q How big is the property then?

A It's two lots. Two lots.

Q Acre? Two acres?

A No, not that much.

Q Two regular city-type lots?

A Yes.

Q Any other property?

A No, except the one I'm living in.

Q Right.

A Okay.

Q Which is on Moore Street?

A Right, Moore Avenue.

Q Moore Avenue. How much is that piece of property worth?

A I think it's probably worth about \$150,000, probably. I'm just guessing.

Q How much did you pay for it?

A \$90,000. I paid -

Q When did you buy that?

A In May of '91.

Q You said it's now worth \$150,000?

[p. 12] A Yes.

Q Did you do any improvements on the property?

A Yes.

Q How much money did you put in the improvements?

A That I can't say exactly but I have put quite a bit. I would not have even - I would not have even considered getting that property unless I already had the monies to put into it.

The monies that I put into it was monies that was given to my mom and me back in probably '85, '86, and as I told Mr. Stull, I'm not sure of the exact amount. I wasn't aware that he was going to ask me other things about me. But the monies were given to me, me and my mom, because it was given to me by - and I guess you all want to know, right?

Q Yes, please.

A Okay.

Q Very curious.

A It was given to me by this same man that has already paid my four years' tuition to college and he also gave me an Omega watch back in 1964 when I graduated from high school.

How this happened was is that my mom worked at a motel in Baldwin for, God, my father left home when I was eight months old. I was born and raised in Baldwin. He [p. 13] left home so I never had a father but I had grandparents that were always there for us, so my mom moved in with them and was working seven days a week at a motel.

And at that time, at the time that she was working there, she found a wallet of this white gentleman that was from Canada, he was from Bowmanville, Ontario. His name was Gerald Talcott, T-a-l-c-o-t-t.

He - after Mother found the wallet, she returned it, and - well, he thought he had lost it. He had gone probably as far as - because Baldwin is where 90 and 301 dissect, and he was going through from Canada going down south. Normally he went through to Clearwater, Florida.

But anyways, Mother found the wallet, held it until he came back, because he called back to see if anybody had found it, and Mother did. It probably had between \$100, \$150 in it, but it had his ID, driver's license, charge cards and those kind of things.

So with that, my mom and he became friends because it was just he and his wife, no children, and they were – he would always – they would write each other and then Mother would tell him that I was in school, that I was an A student and back then we were bused to Stanton. And being bused to Stanton from Jacksonville, we were bused 10th, 11th and 12th grades.

My being from Baldwin didn't allow me the chance [p. 14] to get a scholarship because only the well-known children got scholarships, the teachers' daughters or the principals' sons or the people that knew somebody. But the out-of-city, out-of-city kind of kids, even if they were A students didn't get a chance to go the college.

So my mom, in writing and talking to him, was advising Mr. Talcott that I was not going to be able to go even though I was number 19 or 21 in a class of 420 back in '64.

He said, "If Joyce is that smart, what I'll do is I'll send her," and he paid my tuition for all four years.

When I graduated, though, his wife had died, and he gave me her Omega watch for my graduation present, and that was back in '64. And, of course, I had never had a gold watch before but then I still even have that watch now because my daughter – it was given to my daughter on her 14th birthday. And it's an Omega that is intact and you can tell that it's old, old watch.

Q How much money did he give to you and your mom in 1985 or '86?

A Well, see, I'm not really sure exactly how much it was because it was given to us – it was given to us in a

box and it was basically for my mom, for her and her livelihood, because he was talking about how hard she had had it, how hard she had worked, and the fact that he just [p. 15] wanted her to be sure she did all right.

And, like I said, if I said to you exactly how much it was, I would be lying to you.

Q Approximately.

A Approximately maybe from \$80- to \$120,000 maybe. I'm not even sure.

Q That was back in '85 or '86?

A Yes.

Q How many sisters and brothers do you have?

A One. One sister alive, one brother that died ten years ago with lung cancer.

Q Your mother was still living in Baldwin when she got the money?

A Yes.

Q Where was she living in Baldwin?

A It's four of them that lived together. My mom lives at one trailer. My sister lives next door. My uncle lives there and my aunt lives there. So, it like an area.

And my mom did in fact leave me the trailer when she died. She died two years ago, October 1990.

Q So, this money was given to her you said '85, '86?

A Yes.

Q What did she do with the money?

A I don't know that my mom did much with anything [p. 16] because my mom worked at – for the state, too, at Northeast Florida State Hospital.

And my mom was not a person that goes out and buys much of anything, so most of the things that my mom bought were things that I would buy, like I would buy her suits for her birthday or suits for Christmas and those kinds of things.

But other than going to church and working, my mom didn't really do much of any buying a lot because even when my – my stepfather died probably a couple of years even before '90, so that had to be '88.

Well, then, when he died, my mom at that time bought a new trailer and gave my sister that property and gave my sister her old original trailer and then bought the property next door and moved to that trailer, moved to a double-wide trailer next door.

So, I don't know, I don't really know that she did that much except kept it. But I did call the IRS to be sure that it was monies that we could keep, and I was told that if it was a gift and that there were no stipulations for it, that it was okay, it was okay to have.

They did –

Q If I could interrupt you for a second. How was your mother living at that time? Was she living pretty well?

[p. 17] A Oh, sure, Mother was doing okay, yes. She didn't have any responsibilities except herself. Well, and,

well, I had a stepfather, too, but then my stepfather wasn't – he didn't do that much. We had a stepfather but then he drank and he really didn't help my mom that much. My mom worked and made a living. My stepfather worked sometimes.

Q So, what happened to the money once your mother died in 1990?

A My mom had colon cancer so she had been sick for a couple of years actually. And of course she was coming over for radiation treatment and cancer and chemotherapy treatments, too.

Q How was that paid for?

A My mom had insurance, too, from the state. Remember, she was still working at the – and she went off on retirement disability, too, when she stopped working, and that was probably two years before '90, so that had to be '88, and she stopped working due to her colon cancer, too.

Q When she died, what happened to this money, this \$80- to \$120,000?

A It was basically mine and my mom's anyway to use however we saw fit. Well, basically it was supposed to be for my mom but my mom is no longer there.

Q Did you use any of it before your mother died?

[p. 18] A No. I had no need to.

Q Did she have sole possession of it –

A Yes.

Q - when she was alive?

A Mother had the sole possession until probably a few months before she died.

Q Once she died, all that money came to you?

A Yes.

Q That would have been about 1990?

A Yes.

Q Did your sister get any of this money?

A No.

Q Why is that?

A My sister got all of my mom's insurance monies which was a bit, too. And then the monies that was given to my mom and myself from Mr. Talcott was basically for my mom and her well-being basically and of course to me.

Q Is Mr. Talcott still living?

A No. My mom - well, my mom always said she thought that undoubtedly he wasn't going to be living that long after he gave it to us anyway because he brought it to us. Granted he would always give my mom money or he would always bring gifts to my mom, too, through the years, but then he had never ever done anything like that.

So we really figured that - and my mom continued [p. 19] to write him even after that. But then at first the letters would just get there and then never come back, and towards the end, the letters would get returned.

Q Back up for a second. You would have gotten \$80-, \$120,000 roughly back in 1990. These properties that you said you purchased, the Moncrief Road, the Hunt Street, the Cecilia Street and the Sixth Avenue property, and I guess it would be Sixth Avenue, did you use any of this money to purchase those?

A No, none of it.

Q How did you purchase those pieces of property?

A Okay. I drove a Volkswagen for 13 years. The only property that I have ever bought was the property that I bought on Moncrief Road prior to then.

And I did bring my pay stubs, too, showing how I've saved for those kinds of things. And I've always had a savings. I've been with the agency for 24 years, too. I started back in '69 right out of college.

I bought the property in '73, I bought the house for \$12,5-, and that house note was no more than \$117 ever for the years that I was buying it.

After having driven a Volkswagen for 13 years, I was determined I was going to buy a Cadillac and I did in '84 finally. And then - but when - by the end of '84, I knew that I no longer had a house note anymore. I only had [p. 20] a car note.

Then from '84 to '86 I drove a lemon that was back and forth, back and forth, with it because it wasn't running good.

Then '86 I bought another one because it was a lemon. But I had to get a lawyer in order to get it because they weren't going to do much. '86 -

Q Let me stop you there because we are under some time limitations. I'm more interested in these properties than I am interested in the cars.

The property we were talking about, we discussed the Moncrief Road, that was the first piece you purchased. Now, the Hunt Street, you said it was a thousand dollars down or -

A Hunt Street?

Q Hunt Street.

A No, no, I got a second mortgage of \$10,000 that paid off the -

Q That was on the Moncrief property?

A Hunt Street.

Q Hunt Street. Okay.

A Yes, ma'am.

Q Then -

A I paid a thousand dollars down for the Cecilia.

Q All right.

[p. 21] A Yes.

Q And during this period of time you had two children by then, right, by the 1980s?

A '80s?

Q Yes.

A Yes.

Q '84, '85, you had your son and your daughter?

A Yes.

Q Were you the sole parent supporting those two children?

A No. I have never had to solely support my daughter.

Q Okay.

A My ex-husband paid child support of \$60 a month until my son was 18, but that was hardly nothing, yes.

Q Okay.

A I was the sole support for my son, with the exception of \$60 a month.

Q Okay. We will get back to your daughter's support in a second. Let's go through the purchases of these properties.

Hunt Street, you got a second mortgage on that property?

A Right.

Q And then you paid \$300 - how much did you pay on [p. 22] the second, how much did you pay on the second?

A I still am. It's \$114 a month. But all the while now, I'm also getting \$375 a month in rentals.

Q Then the Cecilia Street property you put a thousand dollars down?

A Um-hum.

Q That was from your own savings?

A Right.

Q You bought that in '85?

A No. On the what?

Q Cecilia Street.

A A thousand dollars down?

Q Yes.

A Yes, yes, okay.

Q And the Eighth Street you just assumed the mortgage?

A Assumed the mortgage.

Q You are still paying for those?

A Yes.

Q All those properties you are still making payments on right now?

A Yes.

Q Some of them you get money, you get \$400 rent on one and \$375 so that balances out, but pretty much you are still paying for all of that?

[p. 23] A Right.

Q Now -

A My income tax returns show all of that, too.

Q Okay.

A Okay.

Q Let's go to the Moore Avenue property. You were saying that - I asked you I think before you paid \$90,000 for that piece of property. Where did you get the money?

A I assumed a mortgage.

Q Assumed a mortgage?

A Assumed a mortgage that was close to \$40,000, yes. I got \$22- - I had \$25,000 in my savings at my credit union, and I think I took out \$16- or \$18-, I'm not sure which.

Q You borrowed \$16- or \$18,000?

A No, out of my savings.

Q Okay.

A Out of my savings. And then I have a Jax Navy savings that I took \$5,000 out of. I think I took \$20- out because I had \$25- in my credit union savings, because I was upset that my credit union wouldn't loan me \$50,000 with my having \$25,000 in their credit union.

Q What year was this that you bought this property on Moore Street?

A May '91. May 1991.

[p. 24] Q That was after you had received this \$80- to \$120,000?

A I knew I already had that to use.

Q That money you had put in your savings account at Jax Navy?

A No, no, no, that's from my savings. No, ma'am. Through the years.

Q Money that's in the savings is from your savings through the years?

A Yes.

Q So, where was this \$80,000 once - after your mother died, where did you keep that money?

A I just kept it in a closet like my mom did.

Q Wouldn't it have been better to get the interest on that money?

A No. Because I was also told, too, though, that if it's a gift and you are not earning any interest on it, then it still remains a gift. If you put it in the bank and you are earning interest on it, then you pay taxes on it.

Q So, you have this \$80,000 or more?

A \$80- or more.

Q And you had an additional \$25,000 in one savings account and how much in the other one?

A \$5-, maybe about \$5500 in Jax Navy.

[p. 25] Q This was all monies you saved from your income from HRS?

A Yes.

Q And from the properties that you are renting that you don't have to pay back all the money in rent?

A Because I'm earning enough to pay them, yes.

Q Okay.

A My last car note was in '89.

Q So, the \$90,000 that - you assumed the mortgage for \$40,000, and then you borrowed money from your own savings, you took out money from your own savings, a total of about \$22,000?

A Yes.

Q And you put down on that property. Now you said you also made some improvements on the property.

A Yes.

Q How much money, how much improvements?

A Well, I really - I have - the house originally was a two-bedroom, one bath, living room, dining room, kitchen.

Q How many square feet was it originally?

A I'm not even sure because I don't know square footage. And - but it's now three bedrooms, three baths, living room, dining room, kitchen, large den, two and a half car garage.

[p. 26] Q It's basically redone?

A Yes, basically redone, yes.

Q Do you have any idea how much square footage you have in the house now?

A No.

Q How much did the improvements cost you?

A I know they cost at least all I had and then I remortgaged the house to get an additional \$47,000.

Q When you say at least all you had, did that include that \$80,000 you had at home in the closet?

A Yes.

Q And all the money in your savings account?

A Yes, yes. No, not all, because my car – my Cadillac was totaled back in January '92, and when it was totaled I got \$9,6- from the car being totaled.

And then I got a lawyer because, well, we were hurt a little bit, too, because he ran red lights and ran into us. So I probably have close to \$15,000 in my savings at First Union to eventually buy me another car.

But now that we don't get interest back on cars anymore, I don't know if I'm going to get one anytime soon.

Q You said you are not sure how much those improvements cost you?

A No, but it cost all of the monies that my mother left me. That was – all of that was used. So I'd say, [p. 27] and I'm only guessing, I'd say roughly the \$80- to \$120-, I'm not really sure because we are talking about the bricks – not the bricks, the cement, we are talking about the floors, we are talking about the walls, we are talking about the roof, we are talking about – and then I did bring receipts, too.

We are talking about – and then a lot of the work was done on weekends even by friends that I know or we

even had barbecues and beer on Saturdays and in order that they do some of the things. Even with that I'm sure that all of that was used, yes.

Q Who was the primary person doing all the construction for you?

A I was my own contractor, and what I did have was a friend of ours that, well, my uncle had used through the years, too, to add an addition to his house.

Q Who was –

A Clyde Simmons. He directed me to a lot of the roofers, a lot of the persons, the carpenters, the drywall persons and those kinds of things.

And I was at my house every day 12:00 o'clock from August '91 when the construction began until I moved in on September 1992, so it was a year and some months that the work went on.

Q You stayed home during that year?

[p. 28] A At Moncrief, yes.

Q Okay.

A I stayed home at Moncrief but every day at lunchtime I would go to the house, and every afternoon at 5:00 I would go to the house, too. Because usually I had to either pay the person that had done anything or meet somebody for – and then my boss was nice enough to me, too, to allow me off if I needed to go stay somewhere or be somewhere or meet somebody to get this done or meet somebody to get certain things done, yes.

Q What side of town is that piece of property?

A On the Northside.

Q So, you say right now you think it's valued at about \$150,000?

A Yes.

Q And the only monies you received to or that you used -

A No, no, no, no. I also used some monies - I also used some monies for my downpayment because I only had \$22- what did I say I had? About \$22,000? Plus the - and I assumed a mortgage of \$37- or whatever. Okay.

Well, Erica's father had won the Fantasy 5.

Q Who is that?

A Earl Fields. He had won the Fantasy 5 in '90, and he also won at least - we went to Atlantic City.

[p. 29] Q How much did he win in 1990?

A I think it was either, and I'm not exactly sure, I'm sure it's on record, though, either \$167,000 or \$267,000 in '90 on the Fantasy 5.

And June '91 when we went to Atlantic City I'm sure he won at least a hundred thousand dollars.

We always stayed at Caesar's, too. We always stay at Caesar's Palace. I'm sure they have records there.

Q What does he do for a living?

A He's a gambler, and owns some property, too.

Q Where are his properties?

A I don't know his because that's not something I have to know.

Q What do you mean that's not something you don't have to know?

A He's a friend of mine. He's my daughter's father. But then those are not things I have to know.

Q So, we were talking about your downpayment and you were telling me about his winnings here. How much downpayment - did he loan you money for the downpayment?

A Yes yes, he did. He gave me some money orders and I think you all already have records of those. He gave me money orders that amounted to I think about \$27,000 maybe, because one of them I thought - I was thinking I had gotten as a business venture from a partner that we [p. 30] have been in business since 1976, Code 19, John Price, I thought, but I thought he was just giving me something back from the business since I had never gotten any money from our business venture initially.

But I came to find out that he was just repaying a loan to Earl Fields is how I ended up getting that.

Q Tell me a little bit about Code 19 and how you got involved with John Price in that business.

A John had always worked as a clothing person. And John had always dressed nice. He had - I only met him after coming to Jacksonville because, remember, I was born and raised in Baldwin.

He had worked for - at somebody's store for years and years and years, and he convinced me that he knew

the clothing business so well that with just a few thousand dollars invested that we could start from scratch and really make some money. We never did.

Q Did you give him a few thousand dollars to start the business?

A Yes.

Q Where did you get that money from?

A From my savings. We are talking about back in 1976.

MS. INNIS-THOMPSON: I thought you had a question. I am sorry.

[p. 31] BY MS. INNIS-THOMPSON:

Q You have never received a profit from that business?

A Never. Never.

Q So it's been in existence since 1976?

A Yes.

Q Where was it originally located?

A Downtown. Then we thought the move to - and it did pretty good but then you know how you leave the monies in when you are doing okay, and you figure that eventually it will make some money and then you will get something back, but we never did. Never did.

Q Who paid for the overhead expenses like electricity and -

A The store.

Q - stock?

A Store.

Q The store paid for all that?

A Yes. It used to do pretty good. I guess the economy has a lot to do with all businesses now because it hasn't made any money basically.

Q Where is it located now?

A It's now located at Moncrief Road, 4671 Moncrief.

Q And we did speak to Mr. Price and he tells us that a lot of the business is done somewhat even on credit, [p. 32] is that true?

A Um-hum. Yes.

Q And right now is the store paying for itself?

A No. I think the only thing it's doing basically is keeping the lights on most of the time. The lights have been off and the phone has been off.

Q Who is paying for it?

A What?

Q Who is paying for the other expenses like Mr. Price's salary and the stock that's in there?

A He's not getting any salary. He's just still trying to do what he - all he has known to do for all of his life. And he doesn't know - I think he's even been trying to even get a little part-time or side jobs, but then you will really have to ask John.

Q Who pays the rent?

A On the properties?

Q That it's in right now?

A I don't even know that he's even paying any rent in it right now. But then I have been known to help some if he ever needed it. But then I don't think he's even paying rent there now.

Q Is your name on the lease or is his name?

A I don't know that he truly has a lease lease per se, but we just couldn't afford the rents out at Gateway [p. 33] any longer and we were fooling ourselves trying to stay out there.

Q So, Mr. Price made all the arrangements as far as the new facility, the new building that it's in?

A Yes.

Q Well, now, let's get back a little bit to your daughter, Erica. You said that her father, Earl Fields, provided support for her. He always has?

A Um-hum.

Q How much support does he provide?

A I don't know that there is any set number. As I told Mr. Stull, he has always paid for tuition, he has always paid her child care, he has always bought all of her clothes, and I don't know that I could set an amount.

Mr. Stull was determined that I needed to, that I had to, but I can't. He tried to say, "Well, okay, what?"

Like I said, if he - he supports my daughter fully.

Q You said tuition. Is your daughter in college?

A No, she's in private school.

Q What school?

A She's been in private school. She is at Episcopal High School.

Q How much is the tuition there a year?

A It's now \$5,000.

[p. 34] Q Earl Fields pays for that?

A Yes.

Q Everything else concerning your daughter he pays for?

A Yes.

Q Does he give you any monies in support for yourself?

A No I mean, if I have ever asked for anything but, as I told Mr. Stull, I mean, I couldn't put an amount on anything. I mean, if I asked him. for something that I need, he will give it to me, but I can't give you a monthly amount, a weekly amount, an annual amount at all.

Q When he pays for your daughter in supporting your daughter, is it cash monies that he gives to you or does he give you a check or does he give it to your daughter, how does that work?

A He only gives me the cash to pay the tuition.

Q And the other things that she needs, general -

A He buys her clothes.

Q He buys it?

A He has always bought her clothes, yes. He buys them at the beginning of the school year and at Christmastime. And if my daughter wants more betwixt and between, he does that, too.

Q None of this money comes directly to you to do it [p. 35] for her?

A Right. Right.

Q Does he live with you?

A At times.

Q What do you mean by that?

A That he does if he wants to.

Q Where does he live when he's not living with you?

A I don't really know.

Q How often does he want to live with you?

A He's there probably, let's say, sometimes he's there for two or three days, sometimes he's there for twice a month, sometimes he's there once a month. It varies. We are talking about a relationship that's gone back 16, 17 years, and it's okay with me.

Q Do you know any of Mr. Fields' associates, any of his friends?

A Most of the people that I know are also his friends, too.

Q Do you know if he's friendly with Emory Robinson?

A What?

Q Emory Robinson?

A Do I know if he's friends with him?

Q Yes.

A Oh, sure.

Q How about Coach Weathersbee?

[p. 36] A Sure.

Q Larry Toney?

A Sure. Why am I being asked these things?

Q I'm just wondering if you know his friends, and his relationship to any of these people.

Do you know if he's close friends with any of these people?

A I don't know how much but I know that he knows them all.

Q When he's in town, he says [sic] at the house with you on Moore Street?

A If he wants to.

Q Have you ever had Emory Robinson or Coach Weathersbee or Larry Toney over at this house?

A No, but they could come by if they wanted and they knew that and they know that.

Q Did Larry Toney - what does he do for a living, do you know?

A I don't know. You will have to ask him.

Q I think that he's a real estate broker. Did he help you in finding this piece of property on Moore Street?

A Oh, sure, sure.

Q You didn't know what he did at the time, he just helped you out in finding the property?

A What do you mean?

[p. 37] Q You just told me you didn't know what he did for a living. And I said that he helped you find -

A You keep asking me about everybody else. I thought all of this that you were going to be asking was going to be about me. I know all the answers to anything about me.

Q Right.

A I just don't know what anybody else does. I don't know what anybody else supposedly does for a living. Those things you will have to ask those people. But I'm saying to you, though, yes, he did help me find the property.

Q Do you know if he's a real estate broker?

A I don't know that he's a real estate broker. I know that he's helped me to find properties but I don't know that he's a broker. I think there are agents, I think there are brokers, I think there are a lot of different kinds of things. I'm not sure exactly what he is.

Q What other properties have you listed here before that he helped you to find? Did he help you find the property on Moncrief Road?

A No.

Q Hunt Street?

A Yes.

Q Cecilia Street?

[p. 38] A Yes.

Q Sixth Avenue?

A No.

Q And he did help you with this Moore Street address?

A Yes.

Q Now, do you know whether Earl Fields is a drug dealer?

A I don't know that.

Q Other than his gambling, his gambling is the only thing that you know that he does for a living?

A Yes.

Q Have you ever heard around town that he has a reputation for being a drug dealer?

A I have heard that said but, as I told Bill Stull, anybody black that seemingly does okay and that people don't supposedly know what they do, it's almost always considered that that's what you are.

Q But isn't he also known around town as a gambler?

A Yes.

Q So, people could assume that he's just a gambler, not a drug dealer?

A Could, but that's not what most people assume.

Q Does he live in town here? Does he live in Jacksonville?

[p. 39] A When he's in town the times that I see him, he does stay with me, but I don't know where else he lives when he's not with me.

Q When you heard that he may be a drug dealer, did this concern you at all?

A No.

Q And the money that you said he loaned you for the downpayment on the house, I don't think -

A It wasn't loaned.

Q He gave it?

A It was given.

Q I don't think you gave me an amount on that. Approximately how much was that?

A The money orders were there. Mr. Stull has a record.

Q Can you tell me now? I don't have a record of them right here.

A See, then you are - you may say I said the exact wrong number.

Q Give me an approximate amount, please.

A Probably about \$25- to \$27-.

Q Thousand?

A Yes.

Q Was this used for the initial purchase or for the improvements?

[p. 40] A The initial purchase, because I felt that I had enough monies for the improvements that I intended making.

Q Did you ask him where he got that money from?

A No, because I knew that he had gotten that monies from the winnings from Fantasy 5. And with him having that much money, I would easily expect that somebody that means something to me would give me at least that much of that.

Q Those money orders, were they purchased in his name or in other people's names?

A I'm not even sure. Larry Toney showed up with them. So, like I said, it wasn't even anything I was that concerned about. I knew he was going to be responsible for X number, X amount, and I was going to be responsible for the remainder, so I don't even know.

Q Did you ever look at them?

A Not really because I was so excited about closing, it really didn't matter.

Q So, other than this money that Mr. Fields gave you for the initial purchase of your house and his support of your daughter, which you can't put any round figure on, but can you estimate how much it cost your daughter to survive on a yearly basis in the lifestyle the way she is accustomed?

A No.

Q Would it be \$20,000, \$30,000?

[p. 41] A I don't know.

Q Does your daughter own any real estate?

A Yes, she does. She and her brother.

Q Where is that?

A It's Marlboro Avenue. She - and I don't know when it was purchased either because what I did was started assuming the - receiving the rents and paying the mortgage, and I've been filing with it since it was - since I learned of the property.

Q You said her and her brother. Is that your older son, the 25-year-old?

A No, it's a son that Earl Fields has. Earl Fields and Erica Fields are on the property.

Q Who purchased that property?

A Earl Fields did.

Q Her brother is Earl Fields? His name is also Earl Fields?

A Yes.

Q Earl Fields, Sr., purchased the property?

A Yes.

Q How much rent do you get off of that property?

A \$300.

Q Where is that located? Well, you told me Marlboro Avenue. Is that on the Northside?

A Yes. On the Northside. It's - since I assumed [p. 42] it, I have been filing income taxes with it.

Q Now let's go to the documents. I know you received a subpoena to appear here and to bring some documents. Can you just go through, you don't have to go through each document. Give us a general idea of what -

A What I have?

Q What you brought, yes.

A These are some receipts for things that were bought for the house. I think it's cement, it's windows for the house, it's things for the house, it's materials, wood, doors, there are things I don't understand either, framework, lumber, more lumber, brick, windows. Is that enough of those?

Q Those are all the receipts for things from the house?

A Yes, that's all that's in this envelope.

Q All right.

A Okay. Then I have here some - you asked that I bring my credit unions, my savings accounts, my bank

accounts and of course my son's is closed because after he went off to college, then we used his savings that I had for him, but my daughter's, too, it's my daughter's savings. I've been saving for her either \$25 biweekly or it's now increased to \$50 biweekly for my daughter that goes into her savings hopefully for college, too.

[p. 43] Q Now -

A I'll -

Q is your paycheck directly deposited?

A Yes, and I brought those as well, too.

Q Okay.

A You will see, too, what comes out. You could see, too, what comes out of these. These are my pay stubs and they happened to be in my desk drawer, is the only reason I have them all. They go back to '89 that will show that either, what, \$200, \$300-or \$500 the last few years before I bought the house that was being saved every two weeks, but anyway I have those, too.

Q Any cash amounts that are going into your account other than your paycheck, where would those monies come from?

A Cash amounts were going? They would be going - no, the check amounts were usually going into - check amounts were usually from my rental properties because they are handled by Foland And Higbee.

Normally they will take out their portion and send me the check. And, of course, also the HUD amounts, too, are checks that would usually go in.

But if it was a cash amount, it either could be that - it could be that Earl might have given me an amount or it could be that I have won Fantasy 5 - not Fantasy. [p. 44] I've won Cash 3 before for \$2400 or a thousand or whatever. That's neither here nor there. Could be any of that.

Q But you don't recall any specific times that Earl gave you cash that you put in your account?

A Well, I'm sure that he gave me something after we won at Atlantic City in '91 in June because he didn't go what us in '92. '91. Because at least when he won the \$100,000, I'm sure that he gave me some monies, but I can't be exact of the amount.

Q Did you have any other documents that you brought with you?

A No.

Q Okay. If you would turn those over.

MS. INNIS-THOMPSON: Mr. Foreman, I would ask you if you would have her turn the documents over, please, to Mr. Stull on behalf of the Grand Jury.

BY MS. INNIS-THOMPSON:

Q Back to your house for a second. Is it furnished already?

A Somewhat.

Q How much did that cost?

A Probably close to \$20- to \$30,000 maybe.

Q Where did that money come from?

A - I had run out of monies so I mortgaged - remortgaged the house and got \$47,000.

[p. 45] Q So, even with that mortgage on the property right now it's still worth about \$150,000 or -

A Sure, sure, it's still worth that anyway.

Q With the mortgage if that was paid off, it will be about a \$200,000 piece of property you would say?

A I don't know.

Q Well, it would be \$150- plus \$47- so I was rounding it off.

A I don't understand that so I don't know.

Q Would you say, you just told me it's worth \$150 with that mortgage?

A No.

Q That is approximating.

A Right. I'm not sure.

Q According to your approximations, if you add that mortgaged amount and you didn't have the mortgage, that would be \$150- plus \$47- so it would be close to \$200,000 according to your approximation that the property that you now live on is worth?

A See, that's not the impression I got. I thought you just asked what do I think the house is - the property is worth. I'm saying to you it's worth \$150,000 as far as I know, period.

Q What about the house and the property, how much would that -

[p. 46] A I'd still say \$150,000, period.

Q Okay. That's what I was trying to find out.

A Yes.

MS. INNIS-THOMPSON: I have nothing further. Does any member of the Grand Jury have any questions?

A JUROR: I have a few. Ms. Johnson, on your property there, the last you were speaking of on Moore Avenue, what are the taxes paid on that for 1992?

THE WITNESS: That's the ones that are due now?

A JUROR: Yes.

THE WITNESS: I haven't paid them yet.

A JUROR: Do you have an appraisal on the property yet?

THE WITNESS: No.

A JUROR: What is the '91 appraisal?

THE WITNESS: \$90,000, I think.

A JUROR: When is the last time you saw Mr. Fields?

THE WITNESS: Yesterday.

A JUROR: Okay. When he's not staying with you, how do you reach him if you need to get in touch with him?

THE WITNESS: I do have an emergency number if he is out of town, and I've given that number to [p. 47] Mr. Stull.

A JUROR: Thank you.

THE WITNESS: You are welcome.

BY MS. INNIS-THOMPSON:

Q Does he know that you are here today, Mr. Fields?

A Yes.

MS. INNIS-THOMPSON: Any other questions?

A JUROR: I just have one. I probably just skipped over it. What are you paying in mortgage on the Moore Street property?

THE WITNESS: It was never asked. \$874.

A JUROR: \$874 a month?

THE WITNESS: Yes. It was a large jump from \$117. And then the first mortgage originally, the one that I sold, was \$636.

A JUROR: What is the mortgage on the Marlboro Avenue property and what is the mortgage -

THE WITNESS: The mortgage on the Marlboro is \$268. But then the rental received is \$300.

A JUROR: Thank you.

MS. INNIS-THOMPSON: Anything else?

GRAND JURORS: (No response)

MS. INNIS-THOMPSON: Thank you. You may be excused for today.

THE WITNESS: Thank you.

[p. 48] (Witness excused at 3:01 p.m.)

[p. 49] CERTIFICATE

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Noel S. Seiler, Registered Professional Reporter, CM, do hereby certify that I was authorized to and did report stenographically and electronically the proceedings in the above-entitled matter, and that the foregoing pages, numbered 1 through 48, inclusive, constitute a true and correct transcription of said stenograph notes.

I further certify that the witness was placed under oath by the Foreman of the Grand Jury in my presence.

WITNESS my signature at Jacksonville, Duval County, Florida, this 9th day of April, A.D., 1993.

/s/Noel S. Seiler, RPR CM

NOEL S. SEILER, Registered Professional Reporter, CM

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA : CASE NO. 94-54-Cr-J-20
:
:
-vs- :
:
JOYCE B. JOHNSON, : Courtroom Number One
: 9:00 a.m.
Defendant. : December 6, 1994
:
.....:

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
before
THE HONORABLE HARVEY E. SCHLESINGER
United States District Judge

APPEARANCES:

For the Government: ERNST D. MUELLER, Esquire
Assistant United States Attorney
Post Office Box 600
Jacksonville, Florida 32201

For the Defendant: WILLIAM J. SHEPPARD, Esquire
215 Washington Street
Jacksonville, Florida 32202

Also Present: JOYCE B. JOHNSON, Defendant
BELINDA JOHNS, Special Agent
Federal Bureau of Investigation

Court Reporter: EVELYN G. ALDERMAN, RPR
Post Office Box 244
Jacksonville, Florida 32201

(Proceedings reported by microprocessor stenography;
transcript prepared by computer.)

[p. 162] CHARLES W. STULL, JR.,

called as a witness by the Government, having been duly
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUELLER:

Q Agent Stull, what is your profession – pardon me.
Mr. Stull, what is your occupation or profession?

A Presently I'm self-employed as a private investi-
gator, security consultant.

Q How long have you been doing that?

A Since August 13th of this year.

Q What did you do before that?

A Before that I spent twenty-five years as Special
Agent [p. 163] with the Federal Bureau of Investigation,
the last fourteen of which I spent working in the Jackson-
ville office.

Q And Agent Stull, did you have occasion to inves-
tigate during the time period of March 1993 and prior
thereto an individual named Earl Fields?

A Yes, I did.

Q Can you just briefly describe the nature of that
investigation?

A The nature of that investigation involving Mr.
Fields was one of investigating illegal activity in cocaine

and marijuana. It also included the proceeds from that type of conduct, the cash, what happened to the cash that was involved in these illegal activities.

Q Now, Agent Stull, in that connection, did you have occasion to serve a grand jury subpoena on an individual named Joyce Johnson?

A Yes, sir, I did. I served a federal grand jury subpoena on Ms. Johnson, I believe it was on March 19th, . . .

* * *

[p. 181] BENJAMIN W. MIXON,

called as a witness by the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUELLER:

* * *

[p. 183] Q Now, Mr. Mixon, do you recall what it was that the grand jury was investigating on the particular occasion when she appeared?

A Yes, we were investigating an alleged drug operation or distribution of narcotics at the time for an individual named Earl James -

THE COURT: Wait one second.

THE WITNESS: Fields.

THE COURT: Wait. Slow down.

(At the sidebar.)

MR. SHEPPARD: Your Honor, this is an improper matter for the jury. It goes to materiality and that's a matter for the Court, and I object.

MR. MUELLER: Well, frankly, I think we're - I mean I was not going to ask another question on this subject -

MR. SHEPPARD: And I'd ask it be stricken.

[p. 184] MR. MUELLER: - but I think I'm entitled to bring out what it was.

THE COURT: I'll overrule the objection.

(In open court.)

THE COURT: Go ahead. If you want to repeat your answer.

BY MR. MUELLER:

Q I was going to ask him if he had completed his answer.

A I had completed my answer.

Q All right. And have you ever heard the term money laundering?

A Yes, I have.

MR. SHEPPARD: Same objection.

THE COURT: Overruled.

BY MR. MUELLER:

Q Is that something which the grand jury was investigating on that occasion?

A Yes, it was. It was.

* * *

IN THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

UNITED STATES OF
AMERICA

Plaintiff,

-vs-

JOYCE B. JOHNSON,
Defendant.

Jacksonville, Florida

Case No. 94-54-Cr-J-20

December 7, 1994

10:35 A.M.

Courtroom Number 1

VOLUME 2 A

**TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE HARVEY E.
SCHLESINGER, UNITED STATES DISTRICT JUDGE
and a jury**

GOVERNMENT COUNSEL:

ERNST D. MUELLER,
Assistant United States Attorney
200 W. Forsyth Street, Suite 700
Jacksonville, Florida 32202

DEFENSE COUNSEL:

WILLIAM J. SHEPPARD and ADAM B. ALLEN
215 N. Washington Street
Jacksonville, Florida 32202

Court Reporter:

L. Marie Splane, RPR, RMR, RDR, CRR
P.O. Box 1196
Jacksonville, Florida 32201
(904) 356-1985

(Proceedings reported by microprocessor stenography; transcript produced by computer.)

* * *

[p. 112] THE COURT: With respect to this particular offense, there are only three essential elements that the Court need to consider and that the jury would have to consider in this case because materiality is one that I have to do on my own, and that is that the testimony was given while the defendant was under oath as a witness before the grand jury, as [p. 113] charged. And I find that there is sufficient evidence for the jury to make a determination as to whether she was or she wasn't, based upon the testimony of the foreman of the grand jury and the court reporter.

The second element is that such testimony was false in one or more ways charged concerning some material matter in the grand jury proceeding. And the question that I pointed to, and what they're specifically speaking of in this particular indictment, "It was given to me by this man that had already paid my four-year tuition in college." Then on page 4, "The matter that I mentioned about the date. Yes."

And there's also alleged that the amount between 80 and \$120,000 is not true. And the answer above that, "Well, see, I'm not really sure exactly how much it was because it was given to us, it was given to us in a box and it was basically for my mom," et cetera, et cetera. That's the alleged false statement.

And then on page 5 it's alleged, where the question was, "So where was this \$80,000 once - after your mother died, where did you keep the money?"

The answer is, "I just kept it in a closet like my mom did," is alleged to be false.

And on the following page 6 in response to the question, "So you have this \$80,000 or more?" Answer is alleged to be false, "80 - or more."

[p. 114] And then at the bottom of the page, "You said you were not sure how much these improvements cost you?"

Answer: "No, but it cost all the monies that my mother left me. That was all that was used, so I'd say, and I'm only guessing, I'd say roughly the \$80,000 to \$120,000."

That's the alleged false statements.

There is sufficient evidence that's been submitted by the prosecutor with respect to the death date of Mr. Talcott and the dates that the defense contends that the money and the grand jury testimony was provided. Also, the will may have some circumstantial bearing on whether there was any monies that were given. I found the will very interesting where he left a lawn swing and the blacksmith anvil to his friends. I gathered that was his worldly possessions or something that he cherished enough to leave to others.

With respect to the question of materiality in the second element, that's something for the Court to determine, and I'll make a factual finding and a legal finding at this juncture. The testimony of the foreman of the grand jury, in the indictment itself, in the ways and means portion of paragraph (a) says that what they were investigating at the time was alleged distribution of

cocaine and marijuana by Mr. Fields and the disposition of the money which was the proceeds of that business, including the possible concealment [p. 115] of the proceeds as investments in real estate. And with respect to monies that Mr. Fields may have given to Ms. Johnson to either purchase the home or to reconstruct the home, I conclude would be within the purview of information that the grand jury may have been looking at in order to continue their investigation or conduct their investigation on Mr. Fields.

* * *

GOVERNMENT'S REQUESTED INSTRUCTION NO. 7

43

False Declaration (Before Grand Jury) 18 USC § 1623

Title 18, United States Code, Section 1623, makes it a Federal Crime of offense for anyone to make a false statement under oath while appearing as a witness before a Federal grand jury.

The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

- First: That the testimony was given while the Defendant was under oath as a witness before the Grand Jury of this Court as charged;
- Second: That such testimony was false in one or more of the ways charged concerning some material matter in the Grand Jury proceedings; and
- Third: That such false testimony was knowingly and willfully given by the Defendant as charged.

Testimony is "false" if it was untrue when it was given and was then known to be untrue by the witness or person giving it.

The "materiality" of the matter involved in the alleged false testimony is not a matter with which you are concerned, but rather is a question for the Court to decide. You are instructed that the questions asked the

Defendant, as alleged constituted material matters in the Grand Jury proceedings referred to in the indictment.

In reviewing the testimony which is charged to have been false, you should consider that testimony in the context of the series of questions asked and answers given, and the words used should be given their common and ordinary meaning unless the context clearly shows that a different meaning was mutually understood by the questioner and the witness.

If you should find that a particular question was ambiguous or capable of being understood in two different ways, and that the Defendant truthfully answered one reasonable interpretation of the question under the circumstances presented, then such answer would not be false. Similarly, if you should find that the question was clear but the answer was ambiguous, and one reasonable interpretation of the answer would be truthful, then the answer would not be false.

PATTERN JURY INSTRUCTIONS – Prepared by Committee on Pattern Jury Instructions, District Judges Association, Eleventh Circuit, 1985.

DEFENDANT'S REQUESTED JURY INSTRUCTION
NO. 8

43
False Declaration
(Before Court) – Modified
18 USC §1623

Title 18, United States Code, Section 1623, makes it a federal crime of offense for anyone to make a false statement under oath while appearing as a witness in any proceeding before any court.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

- First: That the testimony was given while the defendant was under oath as a witness before a court as charged;
- Second: That such testimony was false in one or more of the ways charged concerning some material matter in the court proceedings; and
- Third: That such false testimony was knowingly and willfully given by the defendant as charged.

Testimony is "false" if it was untrue when it was given and was then known to be untrue by the witness or person giving it.

The "materiality" of the matter involved in the alleged false testimony is not a matter with which you are concerned, but rather is a question for the court to decide.

You are instructed that the questions asked the defendant, as alleged, constituted material matters in the court proceedings referred to in the indictment.

In reviewing the testimony which is charged to have been false, you should consider that testimony in the context of the series of questions asked and answers given, and the words used should be given their common and ordinary meaning unless the context clearly shows that a different meaning was mutually understood by the questioner and the witness.

If you should find that a particular questions [sic] was ambiguous or capable of being understood in two different ways, and that the defendants truthfully answered one reasonable interpretation of the question under the circumstances presented, then such answer would not be false. Similarly, if you should find that the question was clear but the answer was ambiguous, and one reasonable interpretation of the answer would be truthful, then the answer would not be false.

PATTERN JURY INSTRUCTIONS – Prepared by Committee on Pattern Jury Instructions, District Judges Association, Eleventh Circuit, 1985.

IN THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

UNITED STATES
OF AMERICA

Plaintiff,

-vs-

JOYCE B. JOHNSON,
Defendant.

Jacksonville, Florida

Case No. 94-54-Cr-J-20

December 8, 1994

9:00 A.M.

Courtroom Number 1

VOLUME 3

**TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE HARVEY E.
SCHLESINGER, UNITED STATES DISTRICT JUDGE
and a jury**

GOVERNMENT COUNSEL:

ERNST D. MUELLER,
Assistant United States Attorney
200 W. Forsyth Street, Suite 700
Jacksonville, Florida 32202

DEFENSE COUNSEL:

WILLIAM J. SHEPPARD and ADAM B. ALLEN
215 N. Washington Street
Jacksonville, Florida 32202

Court Reporter:

L. Marie Splane, RPR, RMR, RDR, CRR
P.O. Box 1196
Jacksonville, Florida 32201
(904) 356-1985

(Proceedings reported by microprocessor stenography;
transcript produced by computer.)

[p. 131] CHARGE OF THE COURT

* * *

Title 18, United States Code, Section 1623, makes it a federal crime or offense for anyone to make a false statement under oath while appearing as a witness before a [p. 132] federal grand jury. The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First, that the testimony was given while the defendant was under oath as a witness before a grand jury of this Court, as charged.

Second, that such testimony was false in one or more of the ways charged, concerning some material matter in the grand jury proceeding.

And, third, that such false testimony was knowingly and willfully given by the defendant, as charged.

Testimony is false if it was untrue when it was given and was then known to be untrue by the witness or person giving it.

A statement contained within a document is false if it was untrue when used and was then known to be untrue by the person using it.

The materiality of the matter involved in the alleged false testimony is not a matter with which you are concerned, but, rather, it is a question for the Court to decide. You are instructed that the questions asked the defendant, as alleged, constituted material matters in the grand jury proceedings referred to in the indictment.

In reviewing the testimony which is charged to have been false, you should consider that testimony in the context [p. 133] of the series of questions asked and answers given and the words used should be given their common and ordinary meaning, unless the context clearly shows that a different meaning was mutually understood by the questioner and the witness.

If you should find that a particular question was ambiguous or capable of being understood in two different ways, and that the defendant truthfully answered one reasonable interpretation of the question under the circumstances presented, then such answer would not be false.

Similarly, if you should find that the question was clear but the answer was ambiguous and one reasonable interpretation of the answer would be truthful, then the answer would not be false.

You will note that the indictment charges that the offense was committed on or about a certain date. The Government does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the Government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term has been used from time to time in these instructions, means that the act

[p. 134] was committed voluntarily, purposely, with the specific intent to do something the law forbids, that is, with bad purpose, either to disobey or disregard the law.

* * *

UNITED STATES DISTRICT COURT
MIDDLE District of FLORIDA

UNITED STATES
OF AMERICA

V.

JOYCE B. JOHNSON

(Name of Defendant)

**JUDGMENT IN A
CRIMINAL CASE**

(For Offenses Committed

On or After

November 1, 1987)

Case Number:

94-54-Cr-J-20

(Filed Apr. 4, 1995)

William J. Sheppard, Esq.
Defendant's Attorney

THE DEFENDANT:

XX pleaded guilty to count(s)
was found guilty on count(s) One of the Indictment
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. 1623	Perjury	March 1993	One

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

— The defendant has been found not guilty on count(s)
_____ and is discharged as to such
count(s).

- Count(s) _____ (is)(are) dismissed on the motion of the United States.
- X It is ordered that the defendant shall pay a special assessment of a \$50.00, for count(s) One, which shall be due X immediately _ as follows: _

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.:
261-94-7314

Defendant's Date of Birth: March 31, 1995
June 17, 1947 Date of imposition of Sentence

Defendant's Mailing Address: 8063 Moore Ave.
Jacksonville, FL 32208 /s/ Harvey E. Schlesinger
Signature of Judicial Officer

Defendant's Residence Address: 8063 Moore Ave.
Jacksonville, FL 32208 HARVEY E. SCHLESINGER,
U.S. District Judge
Name & Title of Judicial Officer

April 3, 1995
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of THIRTY (30) MONTHS

- The court makes the following recommendations to the Bureau of Prisons:
- The defendant is remanded to the custody of the United States marshal.
- The defendant shall surrender to the United States marshal for this district,
a.m.
— at _____ p.m. on _____
— as notified by the United States marshal.
- XX The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,
- X before 2 p.m. on June 9, 1995.
— as notified by the United States Marshal.
— as notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance, and shall not possess a firearm or destructive device. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- X The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- X The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- Defendant shall participate in the Home Detention program for a period of _____ days/months. During this time, defendant will remain at defendant's place of residence except for employment and other activities approved in advance by defendant's Probation Officer. Defendant will be subject to the standard conditions of Home Detention adopted for use in the Middle District of Florida, which may include the requirement to wear an electronic monitoring device and to follow electronic monitoring

procedures specified by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such monitoring not to exceed an amount determined reasonable by the Probation Officer based on ability to pay (or availability of third party payment) and in conformance with the Probation Office's Sliding Scale for Electronic Monitoring Services.

- Defendant shall participate as directed in a program approved by the Probation Officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing for the detection of substance use or abuse. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Substance Abuse Treatment Services.
- Defendant shall participate as directed in a program of mental health treatment approved by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Mental Health Treatment Services.
- X Defendant shall provide the Probation Office access to any requested financial information.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime, in addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of \$30,000.00. The fine includes any costs of incarceration and/or supervision.

XX This amount is the total of the fines imposed on individual counts, as follows:

One of the Indictment.

— The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

— The interest requirement is waived.

— The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

X in full immediately.

- ☐ in full not later than _____.
- ☐ in equal monthly installments over a period of _____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
- ☐ in installments according to the following schedule of payments:

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

- ☒ The court adopts the factual findings and guidelines application in the presentence report.

OR

- ☐ The court adopts the factual findings and guidelines application in the presentence report except (see attachment, if necessary);

Guideline Range Determined by the Court:

Total Offense Level: _____
 Criminal History Category: _____
 Imprisonment Range: _____ to _____ months
 Supervised Release Range: _____ to _____ years
 Fine Range: \$ _____ to \$ _____

- ☐ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$ _____

- ☐ Full restitution is not ordered for the following reason(s):

- ☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

- ☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

- ☐ upon motion of the government, as a result of defendant's substantial assistance.
- ☐ for the following reason(s):

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2417

D.C. Docket No. 94-54-Cr-J-20

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOYCE B. JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(March 19, 1996)

Before ANDERSON and BLACK, Circuit Judges, and FAY,
Senior Circuit Judge.

ANDERSON, Circuit Judge:

On December 9, 1994, a jury convicted defendant-appellant Joyce B. Johnson of perjury in violation of 18 U.S.C. § 1623. The district court sentenced Johnson to 30 months in prison. On appeal from that conviction, Johnson raises a number of claims, all of which we find to be without merit and to warrant no discussion, with the exception of her claim regarding the trial court's instruction to the jury regarding the materiality element of the

perjury count. Because we find that the trial court's erroneous instruction does not rise to the level of plain error, we affirm Johnson's conviction and sentence.

Johnson had a long-term relationship with Earl James Fields, who in the late 1980s was the focus of a federal investigation into alleged cocaine trafficking involving Fields and another man, Willie Bennett. That investigation revealed that Bennett and Fields netted around \$10 million from their trafficking activities. In 1993, federal investigators and a federal grand jury began a search for that money. To this end, Johnson was called to testify before the grand jury on March 25, 1993. Johnson testified that she was employed by the Florida Department of Health and Rehabilitative Services at an annual salary of \$34,000. She also testified that she owned five real properties, including her house, to which she had added considerable improvements. Those improvements raised the appraised value of the property from \$75,600 when Johnson purchased it in 1991 to \$344,800 in 1993. Johnson insisted before the grand jury that she received the money for the improvements, which she asserted amounted to between \$80,000 and \$120,000 from a friend of her mother.

Johnson was indicted for perjury as a result of her testimony before the grand jury. It was revealed at Johnson's subsequent trial that Fields negotiated the purchase of Johnson's home from its previous owner. Johnson paid for the property with eight different cashier's checks, including two checks from a corporation in which Fields had an interest.

At the close of Johnson's trial, the trial judge charged the jury that the element of materiality in the crime of perjury is a question for the judge to decide. Accordingly, the judge instructed the jury that Johnson's statements to the grand jury were material to the grand jury's investigation. Johnson did not object to this instruction. In fact, when the United States began to present evidence concerning materiality during the trial, Johnson's counsel objected, insisting that materiality was a matter for the trial judge and not the jury. The Assistant United States Attorney attempted to question the grand jury foreman about the nature of the grand jury's investigation, and specifically about Fields' narcotics distribution and money laundering activities. At that point, Johnson's counsel stated, "Your honor, this is an improper matter for the jury. It goes to materiality and that's a matter for the Court, and I object." This objection was overruled.¹

The United States Supreme Court has subsequently ruled that the materiality of false statements is an issue for the jury, not the judge. *United States v. Gaudin*, ___ U.S.

¹ It could be argued that Johnson invited the district court's error in this case by insisting that the materiality determination be made by the court. See *United States v. Chandler*, 996 F.2d 1073, 1084 (11th Cir. 1993) (because defendant argued for and submitted jury instruction at issue, he invited the error contained therein and cannot on appeal complain that the instruction was erroneous); *United States v. Hill*, 500 F.2d 733, 738 (5th Cir. 1974) (particular jury instruction alleged on appeal to the erroneous was invited error because defense requested that instruction). It is likely that Johnson's counsel did not want this evidence before the jury, because it would hurt Johnson's case. However, because we find that the district court did not commit plain error, we need not reach the issue of invited error.

___, 115 S.Ct. 2310 (1995). This is true of prosecutions for perjury under § 1623. See *Porat v. United States*, ___ U.S. ___, 115 S.Ct. 2604 (1995). However, because Johnson did not object at trial to the district court's determination of the materiality issue, we review the district court's decision to reserve the materiality determination for itself for plain error. *United States v. Kramer*, 73 F.3d 1067, 1074 (11th Cir. 1996); see also Fed. Rule Crim. P. 52(b); *United States v. Olano*, ___ U.S. ___, 113 S.Ct. 1770, 1777 (1993).

The Supreme Court's decision in *Olano* sets forth a three-part test for clear error determinations. Reviewing courts must investigate: (1) if there was indeed error, (2) if that error was plain (i.e. clear or obvious), and (3) if that plain error affected "substantial rights." *Id.* at 1777-1778; *United States v. Stevenson*, 68 F.3d 1292 (11th Cir. 1995). If we find clear error that affects Johnson's "substantial rights," we have the discretion to remedy the district court's error. *Olano*, 113 S.Ct. at 1779. That discretion is to be exercised when "a miscarriage of justice would otherwise result," such that "the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotations omitted).

We conclude that the trial court's error in this case does not satisfy the three-part test set forth above. Assuming *arguendo* that the district court's error was clear or obvious, we hold that it did not affect the "substantial rights" of the defendant. To implicate "substantial rights," an error must have been prejudicial such that it affected the outcome of the original trial. *Id.* at 1777-1778; *Kramer*, 73 F.3d at 1074. Johnson bears the burden of persuasion with respect to the determination of prejudice. *Olano*, 113 S.Ct. at 1778; *Kramer*, 73 F.3d at 1074

n. 17; see also *United States v. Chandler*, 996 F.2d 1073, 1087 (11th Cir. 1993). Normally this requires that the appellant make a specific showing of prejudice. *Olano*, 113 S.Ct. at 1778.

After reviewing the record in this case, we find overwhelming evidence of the materiality of Johnson's statements. The focus of the grand jury's investigation was the whereabouts of the proceeds from Fields' drug trafficking activities. There was substantial evidence that Johnson, and specifically her house, was one of the avenues through which Fields laundered that money. No reasonable juror could conclude that Johnson's false statements about the source of the money used to purchase and renovate her house were not material to the grand jury's investigation. Therefore, Johnson's conviction for perjury is affirmed.

AFFIRMED.
